law imposes a tax upon "the entire net income . . . from every business . . . carried on in this state by natural persons not residents of the state." New York has never attempted to collect such a tax from the appellant, but the present argument would require that it should.

There is no ground for distinguishing the appellant's situation from that of any other customer of a New York broker having a similar customer's agreement. The only difference is in the amount of commissions charged by the New York broker. In both cases the account is financed by the New Yorker's capital and all transactions are completed in his name. The amount of the compensation can not vary the situation. If the broker charges some customers less than others, it cannot affect the legal nature of the arrangements between him and his customers. The customer with a contract for the cheapest rate cannot be said to be carrying on business in New York while another customer on the same basis, but paying a higher commission for the service rendered, is not so carrying on business in New York. The making of such a contract is not carrying on business in New York. Neither is the exercise of the opportunity to have the New York contractor execute orders there. That the non-resident's contract rights are protected by New York law and enforceable in New York courts does not mean the non-resident is carrying on business there.

Such is the situation between the appellant's firm and the New York correspondents. That the appellant's membership gives his firm the opportunity to contract for lower rates of commissions than others is no basis for saying that the appellant was carrying on business in New York. The right to lower commissions could not make a business otherwise foreign to New York a New York business. It could be pertinent only on the question of whether assuming the existence of a business in New York the appellant used his

membership in that business. But that question does not arise, for the appellant was not carrying on a business in New York, and so the first requisite for "business situs" is lacking and there is no occasion to inquire further.

Respectfully submitted,

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